SUPREME COURT OF THE UNITED STATES.

No. 273.

THE HOME OF THE FRIENDLESS, PLAINTIFF IN ERROR,

vs.

EDWARD S. ROWSE, COLLECTOR OF THE REVENUE FOR ST. LOUIS COUNTY, STATE OF MISSOURI.

IN EBROR TO THE SUPREME COURT OF THE STATE OF MISSOURI.

INDEX.

	Original.	Print
Citation	*A*	1
Writ of error from Supreme Court of United States	*B*	1
Writ of error from Supreme Court of Missouri	1	2
Petition	3	3
Summons	7	5
Sheriff's return to summons	8	5
Order of injunction	8	5
Injunction bond	9	6
Demurrer to petition	10	6
Demurrer overruled and judgment on demurrer made final	11	7
Submission in Supreme Court of Missouri	12	7
Certificate regards decision Supreme Court of Missouri	14	8
Bond for writ of error to Supreme Court of United States	15	9
Certificate of clerk	16	10

A The United States of America to Edward S. Rowse, collector of the revenue for St. Louis county, Missouri, greeting :

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the Supreme Court held at St. Louis, of the State of Missouri, wherein the Home of the Friendless is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable David Wagner, presiding judge of the Supreme Court of Missouri, this third day of April, in the year of our Lord one thousand eight hundred and sixty-eight.

DAVID WAGNER,
Presiding Judge Sup. Ct. Mo.

I, Edward J. Rowse, undersigned, the above-named defendant in error, do hereby acknowledge due service of the above citation this 4th day of April, 1868.

EDWARD S. ROWSE,
Defendant in Error.

B UNITED STATES OF AMERICA, *ss* :

The President of the United States to the honorable the judges of the Supreme Court of the State of Missouri, greeting :

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court, before you, at the March term thereof, between Edward S. Rowse, collector of the revenue for St. Louis county, state of Missouri, plaintiff in error against the Home of the Friendless, defendant in error, a manifest error hath happened, to the great damage of said Home of the Friendless, as by complaint appears, we, being willing that error, if any hath been, should be duly corrected, and full and speedy justice to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court, to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the honorable Salmon P. Chase, Chief Justice of the said Supreme Court, this second of April, in the year of our Lord one thousand eight hundred and sixty-eight.

Issued at office in the city of St. Louis, with the seal of the Circuit Court of the United States for the district of Missouri, dated as aforesaid.

[SEAL.]

BEN. F. HICKMAN,
Clerk C. C. U. S., Missouri Districts.

Allowed by—

DAVID WAGNER,
Presiding Judge Sup. Ct. Mo.

STATE OF MISSOURI, *ss* :

I. O. T. Fishback, clerk of the Supreme Court, held at St. Louis, of the State of Missouri, in obedience to the mandate of the within writ, herewith transmit to the honorable Supreme Court of the United States at Washington a full, true, and complete transcript of the record and proceedings in the within-entitled cause, as fully as the same remains of record and on file in my office.

In testimony whereof I hereunto set my hand and affix the seal of said court at office in the city of St. Louis, this twelfth day of May, A. D. 1868.

[L. S.]

O. T. FISHBACK, *Clerk.*
Per E. P. McCARTY, *Dp.*

1 STATE OF MISSOURI, *ss* :

Be it remembered that on the twenty-ninth day of February, 1868, there was filed in the office of the clerk of the Supreme Court, held at St. Louis, of the State of Missouri, a transcript of the record and proceedings of a certain cause lately pending before the Circuit Court for St. Louis county in said State, which transcript is in the words and figures following, to wit :

Writ of error from Sup. Ct.

THE STATE OF MISSOURI, *ss* :

The State of Missouri to the honorable the judge of the eighth judicial circuit, in said State, greeting :

Whereas in the record and proceedings in a certain cause lately pleading in the St. Louis Circuit Court, wherein the Home of the Friendless is plaintiff and Edward S. Rowse, collector of the revenue of St. Louis county, is defendant in a civil action, manifest error hath intervened to the great damage of said defendant, as by its complaint we are informed:

Now being willing that error, if any there be, should be corrected, and full and speedy justice done to the parties aforesaid in that behalf, command you that you send to us, certified under your seal, the record and proceedings in the cause aforesaid, as fully as the same remain of record before you in said court, so that we may have
2 them before us at our Supreme Court to be begun and held in the city of St. Louis, in the county of St. Louis, in said State, on the third Monday in March next, so that our judges of the Supreme Court, on inspecting the record and proceedings aforesaid, may cause

to be further done therein for correcting the error what of right and according to law ought to be done.

Witness O. T. Fishback, clerk of our said Supreme Court, at office in the city of St. Louis, the 30th day of December, in the year of our Lord one thousand eight hundred and sixty-seven.

[SEAL.] O. T. FISHBACK, *Clerk.*
Per E. P. McCARTY, *Dp.*

On the back of said writ the following endorsement appears :

STATE OF WISCONSIN, *County of St. Louis, ss* :

I, John Lewis, clerk of the Circuit Court of St. Louis county, within and for the county aforesaid, in evidence to the mandate of the within writ, herewith transmit to the honorable Supreme Court of the State of Missouri, held at St. Louis, a full, true, and
3 complete transcript of the record and proceedings in the within-entitled cause, as fully as the same remain of record and on file in my office.

In testimony whereof I hereunto set my hand and affix the seal of said court at my office in the city of St. Louis this 28th day of Feb'y, 1868.

JNO. LEWIS, *Clerk.*

STATE OF MISSOURI, *County of St. Louis, ss* :

Be it remembered that on the second day of August, 1867, there was filed in the office of the clerk of the Circuit Court of St. Louis county, within and for the county aforesaid, a petition which is in the words and figures following, to wit :

In the Circuit Court of St. Louis county, State of Missouri, October term, 1867.

Petition.

THE HOME OF THE FRIENDLESS, plaintiff,
vs.
EDWARD S. ROWSE, COLLECTOR OF THE REVENUE of St. Louis county, defendant.

Plaintiff states that it is a corporation created by an exist-
4 ing order, an act of the general assembly of the State of Missouri entitled "An act to incorporate the Home of the Friendless in the city of St. Louis," approved February 3d, 1853, and which said act is a public act, and is hereby referred to as such.

That the defendant is the collector of the revenue for said St. Louis county, State of Missouri, duly appointed and qualified as such according to law, and is now engaged in discharging his duties as such in the collection of State, county, military, and school taxes therein; that plaintiff organized for the purpose stated in said act of incorporation, and has ever since been actively employed in

the legitimate prosecution of the specific purpose of its incorporation in said act set forth; that by gift, grant, and devise, from sundry persons in aid of the said purpose thereof, and in consideration of the special provisions of said act, said plaintiff has acquired a large amount of property, including real estate, in the county of St. Louis, and now own said real estate in fee simple and absolutely.

That defendant, as such collector, now holds for collection, among other tax bills for State, military, and county taxes, one bill (of which a true copy from the record is herewith filed and
5 marked "Exhibit A,") against plaintiff for two hundred and forty-eight dollars and forty-three cents ($248 43) for State, military, and county taxes for the year 1866, assessed upon two parcels of land of a part of which plaintiff is now still owner, and all of which was in fact the property of plaintiff at and before the time of said assessment, which said bill was made out by the officer of said county authorized by law to assess property in said county for [for] such taxes, and was delivered to and is now held by defendant for collection in the manner provided by law; that defendant has demanded payment of said tax bill, and payment thereof having been refused by plaintiff, defendant is now about to proceed to collect the same by levy and sale of said lands, and has advertised the same as delinquent and liable be sold for non-payment of said taxes thereon, in the manner provided by law in respect to delinquent taxes on lands in St. Louis county.

Plaintiff further states that by reason of its said act of incorporation said taxes are illegally assessed, and are not, or any part thereof, lawfully due from nor payable by plaintiff, all property of plaintiff being by said act of incorporation expressly exempted from taxation at all times.

6 That if defendant makes a levy and sale of said lands or any part thereof for the collection of said tax bills, no adequate remedy will be afforded to plaintiff by an action for damages against said defendant, because by such sale, and pending such suit, a cloud will be cast upon the title of plaintiff to said real estate, and also because the same question would arise each successive year in respect to successive tax bills assessed against plaintiff, whereupon the plaintiff prays this honorable court for its order enjoining and restraining the defendant, as such collector, from collecting by levy and sale as aforesaid the money claimed for taxes in and by said tax bills, or any part thereof, and also that defendant be restrained from offering said lands or any part thereof for sale for any taxes alleged to have been assessed against the same, and that defendant be adjudged to pay the costs of this proceeding; and as in duty bound the plaintiff will ever pray, &c.

HENRY HITCHCOCK and
GEORGE W. LUBKE,
Plaintiff's Attorneys.

Samuel Copp, agent for plaintiff, makes oath and says the foregoing petition and the matters therein stated he believes to be true.

SAM'L COPP.

Subscribed and sworn before me this second day of August, 1867. Witness my hand and seal of said court.

F. A. H. SCHNEIDER,
Clerk of the St. Louis Circuit Court.

And thereupon the following summons issued, to wit:

Summons.

THE STATE OF MISSOURI, *County of St. Louis*, ss:

To the sheriff of St. Louis county, greeting:

We command you to summon Edward S. Rowse, collector of the revenue of St. Louis county, to appear before the judges of our Circuit Court, on the first day of the next term thereof, to be held in the city of St. Louis, within and for the county of St. Louis, on the first Monday of October next, then and there to answer the complaint of the Home of the Friendless, as set forth in the annexed petition, and have you then and there this writ.

Witness Frank A. H. Schneider, clerk of our said court, with the seal thereto affixed, at office in the city of St. Louis, this second day of August, in the year of our Lord eighteen hundred and sixty-
8 seven.

[SEAL.] F. A. H. SCHNEIDER, *Clerk.*

[Stamp.]

To the foregoing summons the sheriff made the following return, to wit:

Sheriff's return.

Executed this writ in the county of St. Louis, on the 12th day of August, 1867, by delivering a copy of the writ and petition as furnished by the clerk to Edward S. Rowse.

JOHN McNEIL, *Sheriff.*
By P. BISCHOFF, *Dept.*

And afterwards at the October term, 1868, the following further proceedings were had, to wit:

Order of injunction.

TUESDAY, *Octob'r 8th*, 1867.

Now at this day come the plaintiff, by his attorney, and presents to the court its bond for injunction executed according to law, in the penal sum of five hundred dollars, with Charles Holmes and Samuel Copp, jr., as sureties, and prays for an order of injunction herein, wherefore it is ordered by the court that said bond be approved, and it is further ordered that said defendant, his agents and servants, be enjoined and restrained from collecting the taxes mentioned in the petition or from enforcing the collection thereof by the sale of
9 the property mentioned in the petition until the further order of this court.

Which bond is in the words and figures following, to wit:

Injunction bond.

Know all men by these presents that we, the Home of the Friendless as principal, and Charles Holmes and Samuel Copp as sureties, are held and firmly bound unto Edward S. Rowse, collector, &c., in the sum of five hundred dollars, for the payment of which well and truly to be made we bind ourselves, our heirs, executors and administrators jointly and severally by these presents. Sealed with our seals, and dated at St. Louis, this eighth day of October, A. D. 1867.

The condition of the above obligation is such, that whereas the said the Home of the Friendless, on the eighth day of October, A. D. 1867, obtained a restraining order or injunction against said Edward Rowse, collector, &c. Now, if the said the Home of the Friendless shall pay all damages that may be occasioned by said restraining order of injunction, and abide the decision which shall be made therein, and pay all sums of money, damages and costs that shall be adjudged against it if the injunction or restraining order be dissolved, then the above obligation to be void; otherwise, to be and remain in full force and virtue.

[SEAL.] HOME OF THE FRIENDLESS,
[SEAL.] SUSAN F. HOLMES,
First Directress.
[SEAL.] CHARLES HOLMES.
[SEAL.] SAMUEL COPP.

Attest:

SARAH C. FISHER, *Sec'y.*

Approved by the court, Oct. 8th, 1867.

[SEAL.] Attest:

F. A. H. SCHNEIDER, *Clerk.*

And after at the October term, the following demurrer to the petition was filed in the words and figures following, to wit:

Demurrer to petition.

OCTOBER 8TH, 1867.

The defendant demurs to the petition of the plaintiff, and says that the same does not set forth facts sufficient to constitute a cause of action, and specially shows that the said plaintiff has not by its said complaint made such a case as entitles it to the relief prayed by its said complaint against this defendant, wherefore he prays judgment whether he shall be compelled to make any further or other answer to the said complaint, and prays to be hence dismissed with his reasonable costs in this behalf sustained.

H. A. CLOVER, *Att'y for Def't.*

And afterwards, at the general term of the October term, 1867, of said court, the following further proceedings were had, to
11 wit:

SATURDAY, *November 30th*, 1867.

It is ordered by the court that the demurrer to the petition be continued.

And afterwards, at the December term, 1867, at the general term thereof, the following further proceedings were had, to wit:

Demurrer overruled and judg't on demurrer made final.

SATURDAY, *December 21st*, 1867.

The demurrer to the petition being submitted to the court, and the court being fully advised of and concerning the premises, doth order that the same be overruled, and the defendant declining to plead further herein, it is ordered by the court that final judgment be entered herein for the plaintiff on the demurrer. It is therefore considered by the court, that the injunction heretofore granted herein, on the 8th day of October, 1867, be, and the same is hereby, made perpetual, and that the plaintiff recover of the defendant the cost of this proceedind, and that execution issue therefor.

STATE OF MISSOURI, *County of St. Louis, ss*:

I, John Lewis, clerk of the Circuit Court of St. Louis county, do hereby certify the above to be a full, true and complete transcript
12 of the record and proceedings in the above-entitled cause, as fully as the same remain in my office.

In testimony whereof I hereto set my hand and affix the seal of said court, at my office in the city of St. Louis, the fourth day of February, A. D. 1868.

[SEAL OF CIRCUIT COURT.] JNO. LEWIS, *Clerk*.

And afterwards, at the March term, 1868, of said Supreme Court, the following proceedings were had in said cause, to wit:

Submission.

THE WASHINGTON UNIVERSITY, defendants in error,
vs.
EDWARD S. ROWSE, plaintiff in error. } 26.

MONDAY, *March 23d*, 1868.

Now again come the parties aforesaid, by their respective attorneys, and after argument herein, submit this cause to the court, upon their brief filed herein. Brief and argument of plaintiff, and brief of defendant in error filed.

THE HOME OF THE FRIENDLESS, defendant in error,
13 *v.*
EDWARD S. ROSE, plaintiff in error.
} Submitted with the preceding case.

And afterward, at the same term of said court, the following judgment was rendered in said cause, to wit:

Judgement of reversal.

THE HOME OF THE FRIENDLESS, defendant in error,
v.
EDWARD S. ROWSE, collector of the revenue of St. Louis county, plaintiff in error.
} 27.—Error to St. Louis Circuit Court.

Now again come the parties aforesaid, by their respective attorneys, and the court being now sufficiently advised of and concerning the premises, doth consider and adjudge that the judgment rendered herein by the said St. Louis Circuit Court be reversed, annulled, and for naught held and esteemed; that the said defendant in error take nothing by its suit in this behalf, but that his petition be dismissed, and that the plaintiff go thereof without day, and recover of the said defendant in error his costs and charges herein expended, and have execution therefor.

Opinion filed.

And afterwards, at the same term of said court, the following further proceedings were had in said cause, to wit:

14 *Certificate regards decision.*

THE HOME OF THE FRIENDLESS, defendant in error,
v.
EDWARD S. ROWSE, collector, &c., plaintiff in error.

On motion of the aforesaid defendant in error, it is ordered that it be here certified, as a part of the record in this cause, together with the transcript herein, that in said cause there was necessarily drawn in question the construction of that clause of the Constitution of the United States whereby it is provided that no State shall pass a law impairing the obligation of contracts; that in the consideration of said cause by this court, being the highest court of law or equity of the State of Missouri in which a decision in said suit could be had, the question arose, and was necessarily decided by this court, whether, under and by virtue of said clause of the Constitution of the United States, the said Home of the Friendless, in virtue of certain provisions in the acts of the general assembly of said State of Missouri incorporating the same, were lawfully entitled to the exemption of the property thereof from taxation, as specially set up

and claimed by said Home of the Friendless in the petition by it filed in said suit; that said question was decided by this court against the right, privilege, and exemption so specially set up and
15 claimed as aforesaid by said Home of the Friendless, under the said clause of the said Constitution, and said decision was necessary to the adjudication of said cause.

Writ of error to Supreme Court United States allowed, and bond approved and filed.

Bond for writ of error.

Which bond is in the words and figures following, to wit:

Know all men by these presents that we, "The Home of the Friendless," as principal, and Samuel Copp and George S. Drake as sureties, are held and firmly bound unto Edward S. Rowse, collector of the revenue for St. Louis county, State of Missouri, in the full and just sum of fifteen hundred dollars, to be paid to the said Edward S. Rowse, collector as aforesaid, his heirs, executors, adminstrators, or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents.

Sealed with our seals and dated this third day of April, in the year of our Lord one thousand eight hundred and sixty-eight.

Whereas lately, at the March term, A. D. 1868, of the Supreme Court of the State of Missouri, in a suit depending in said court between the Home of the Friendless, defendant in error, against Edward S. Rowse, collector of the revenue for St. Louis county, State of Missouri, judgment was rendered against the said Home of
16 the Friendless, and the said Home of the Friendless having obtained a writ of error of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Edward S. Rowse, collector as aforesaid, citing and admonishing him to be and appear at a Supreme Court of the United States, to be holden at Washington, the first Monday of December next:

Now the condition of the above obligation is such that if the said Home of the Friendless shall prosecute said writ to effect, and answer all damages and costs if it shall fail to make good its plea, then the above obligation to be void, else to remain in full force and virtue.

HOME OF THE FRIENDLESS,
[SEAL.] By SUSAN S. HOLMES, *First Directress.*
[SEAL.] SAM'L COPP.
[SEAL.] GEO. S. DRAKE.

Sealed and delived by order of the Board of Managers.
Attest:

SARAH C. FISKE, *Secretary.*

Approved by—

DAVID WAGNER,
Presiding Judge Sup. C't Mo.

Certificate of clerk.

STATE OF MISSOURI, *ss:*

I, O. F. Fishback, clerk of the Supreme Court, held at St. Louis, of the State of Missouri, certify the above and foregoing to be
17 a full, true, and complete copy of the record and proceedings in the cause of the Home of the Friendless *v.* Edward S. Rowse, collector, &c., as fully as the same remains of record and on file in my office.

Witness my hand with the seal of said Supreme Court hereto affixed, at office in the city of St. Louis, this twelfth day of May, A. D. 1868.

[SEAL.] O. T. FISHBACK, *Clerk.*
Per E. P. McCARTY, *D'p.*

Endorsed: The Home of the Friendless, pl'ff in error, *v.* Edward S. Rowse, collector of the revenue of St. Louis county, def't in error. From Supreme Court, Mo. $7 50.